

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UGOCHUKWU GOODLUCK
NWAUZOR individually and on behalf of
those similarly situated, and FERNANDO
AGUIRRE-URBINA, individually,

Plaintiffs,

v.

THE GEO GROUP, INC., a Florida
corporation,

Defendant.

CASE NO. 3:17-cv-05769-RJB

ORDER ON PLAINTIFFS'
MOTION FOR ATTORNEYS' FEES
AND COSTS

THIS MATTER comes before the Court on the Plaintiffs' Motion for Attorneys' Fees and Costs. Dkt. 537. The Court has considered all documents filed regarding the motion and is fully advised. Neither party has requested oral argument pursuant to Local Rule W.D. Wash. 7(b)(4).

On October 29, 2021, the jury awarded Plaintiffs in this class action damages of \$17,297,063.05 in back wages under the Washington Minimum Wage Act ("MWA"). Dkt. 519. This was the second trial, the first having ended in a hung jury and mistrial. Plaintiffs now move for an award of attorneys' fees and costs pursuant to RCW 49.46.090, RCW 49.48.030, and Fed. R. Civ. P. 54(d)(2). Dkt. 537. For the reasons provided below, their motion (Dkt. 537) should

1 be granted, in part, and denied, in part. The Plaintiffs should be awarded \$1,418,671.43 in
 2 attorneys' fees and \$177,849.44 in costs.

3 DISCUSSION

4 As the prevailing parties, the Plaintiffs are entitled to recover reasonable attorneys' fees
 5 and costs in this case. The MWA provides that "[a]ny employer who pays any employee less
 6 than the amounts to which such employee is entitled under or by virtue of this chapter, shall be
 7 liable ... for costs and such reasonable attorney's fees as may be allowed by the court." RCW
 8 49.46.090(1). Washington law also permits recovery of attorneys' fees when plaintiffs are
 9 successful in recovering a judgment for back wages as is the case here. RCW 49.48.030
 10 provides, "[i]n any action in which any person is successful in recovering judgment for wages or
 11 salary owed to him or her, reasonable attorney's fees, in an amount to be determined by the
 12 court, shall be assessed against said employer or former employer."

13 GEO does not dispute that the Plaintiffs are entitled to an award of attorneys' fees and
 14 costs; it asserts that the Plaintiffs' requested amounts are unreasonable.

15 **A. REASONABLE ATTORNEYS' FEE STANDARD**

16 In determining what attorney's fee is reasonable in a particular case, the court arrives at the
 17 "lodestar amount," that is, multiplying the number of hours reasonably expended by a reasonable
 18 hourly rate. *Jordan v. Multnomah County*, 799 F.2d 1262, 1265 (9th Cir. 1986) (*quoting*
 19 *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). "While in most cases the lodestar figure is
 20 presumptively reasonable, in rare cases, a district court may make upward or downward
 21 adjustments to the presumptively reasonable lodestar on the basis of those factors set out in *Kerr*
 22 *v. Screen Extras Guild, Inc.*, 526, F.2d 67, 69–70 (9th Cir.1975), that have not been subsumed in
 23 the lodestar calculation." *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 982 (9th Cir. 2008)

1 (*internal and quotations citations omitted*).

2 Under *Kerr*, the court considers the following factors: (1) the time and labor required, (2) the
 3 novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal
 4 service properly, (4) the preclusion of other employment by the attorney due to acceptance of the
 5 case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations
 6 imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9)
 7 the experience, reputation, and ability of the attorneys, (10) the 'undesirability' of the case, (11)
 8 the nature and length of the professional relationship with the client, and (12) awards in similar
 9 cases. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 69-70 (9th Cir.1975), *cert. denied*, 425
 10 U.S. 951 (1976). These considerations are consistent with Washington Rules of Professional
 11 Conduct 1.5.

12 The fee applicant bears the burden of documenting the appropriate hours expended in the
 13 litigation and must submit evidence in support of those hours worked. *Gates v. Gomez*, 60 F.3d
 14 525, 534-35 (9th Cir. 1995).” *Id.* The party opposing the fee application has a burden of rebuttal
 15 that requires submission of evidence to the district court challenging the accuracy and
 16 reasonableness of the hours charged or the facts asserted by the prevailing party in its submitted
 17 affidavits. *Id.*

18 **B. LODESTAR**

19 In determining hourly rates, the Court must look to the “prevailing market rates in the
 20 relevant community.” *Bell v. Clackamas County*, 341 F.3d 858, 868 (9th Cir. 2003). The rates
 21 of comparable attorneys in the forum district are usually used. *See Gates v. Deukmejian*, 987
 22 F.2d 1392, 1405 (9th Cir. 1992). In making its calculation, the Court should consider the
 23 experience, skill, and reputation of the attorneys requesting fees. *Schwarz v. Sec’y of Health &*
 24

1 *Human Serv.*, 73 F.3d 895, 906 (9th Cir. 1995). The Court is further allowed to rely on its own
 2 knowledge and familiarity with the legal market in setting a reasonable hourly rate. *Ingram v.*
 3 *Oroudjiam*, 647 F.3d 955, 928 (9th Cir. 2011).

4 The Plaintiffs request that the Court approve a lodestar amount of \$1,289,701.30. The
 5 Plaintiffs were represented by four separate law firms:

- 6 • Schroeter Goldmark & Bender (“SGB”), claiming: \$1,033,941.20 + 13,980 (post-trial
 7 motions) = 1,047,921.20,
- 8 • The Law Offices of R. Andrew Free, claiming \$147,012.50,
- 9 • Menter Immigration Law PLLC, claiming \$33,355.00, and
- 10 • Open Sky Law, PLLC, claiming \$61,412.60.

11 The Plaintiffs’ individual attorneys and their hourly rates are:

12 SGB Lawyers:

13 Adam Berger, who is a partner at SGB and served as trial counsel for the Plaintiffs, requests
 14 \$550 per hour. Dkt. 538. Mr. Berger has practiced law for over 30 years. *Id.*

15 Jamal Whitehead, who is also a partner at SGB and served as trial counsel for the Plaintiffs
 16 requests \$500 per hour. Dkt. 538. He has 14 years of experience. *Id.*

17 Lindsay Halm, a shareholder at SGB, who has around 16 years of experience, requests \$500
 18 per hour. Dkt. 538.

19 Rebecca J. Roe, a shareholder at SGB with over 40 years of experience, requests \$625 per
 20 hour. Dkt. 538.

21 Carson Phillips-Spotts, an associate with SGB and with under five years of experience
 22 requests \$325 per hour. Dkt. 538.

1 Page Ulrey, who was working as an attorney at SGB during portions of this case, with over
2 20 years of experience, requests \$400 per hour. Dkt. 538.

3 Kelli Carson, who was who was working as an attorney at SGB during portions of this case,
4 with six years of experience, requests \$300 per hour. Dkt. 538.

5 SGB paralegals Sheila Cronan, Virginia Mendoza, Mary Dardeau who each request \$170 per
6 hour. Dkt. 538.

7 The Law Offices of R. Andrew Free:

8 R. Andrew Free is a Nashville, TN based lawyer with 10 years of experience. Dkt. 539. He
9 requests \$475 per hour. *Id.*

10 Menter Immigration Law PLLC:

11 Meena Menter of Menter Immigration Law PLLC has practiced for 20 years. Dkt. 540. She
12 requests \$350.00 per hour. *Id.*

13 Open Sky Law, PLLC:

14 Devin Theriot-Orr has almost 20 years of experience and requests \$450.00 per hour. Dkt.
15 541.

16 These rates are reasonable for the community and should be used to calculate fees. *See e.g.*
17 Dkt. 542 (attorney rates in the Western District of Washington (“WAWD”) range from \$625 to
18 \$275, depending on experience and \$170 per hour for paralegals); Dkt. 543 (hourly rates in
19 WAWD range from \$650 to \$290 for lawyers, depending on experience); Dkt. 544 (attorney
20 rates in WAWD range from \$550 to \$275, depending on experience, and \$175 per hour for
21 paralegals). GEO maintains that the claimed rates for the attorneys and paralegals are too high,
22 particularly considering the variation among those with similar experience. Dkt. 551. The
23 variation in rate is to be expected. Some lawyers and paralegals choose to charge less than those
24

1 with similar experience. The rates claimed by the Plaintiffs' lawyers are within the range of
2 what is reasonable in the Western District of Washington at Tacoma. This opinion will now turn
3 to the number of hours billed by the lawyers.

4 In the Ninth Circuit, "[t]he number of hours to be compensated is calculated by
5 considering whether, in light of the circumstances, the time could reasonably have been billed to
6 a private client." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). A district
7 court should exclude hours that are "excessive, redundant, or otherwise unnecessary." *Gonzalez*
8 *v. City of Maywood*, 729 F.3d 1196, 1203 (9th Cir. 2013)(citing *McCown v. City of Fontana*, 565
9 F.3d 1097, 1102 (9th Cir.2008)).

10 The hours claimed by the Plaintiffs' lawyers are reasonable. In light of the circumstances
11 here, "the time could reasonably have been billed to a private client." *Moreno*, at 1111. GEO
12 complains that it was unreasonable for the Plaintiffs' lawyers to bill for time for strategy
13 conferences with the State of Washington's lawyers. Dkt. 551. Plaintiffs properly point out that
14 the case was tried jointly with the State and that coordination was critical. Plaintiffs' applied a
15 20% reduction in hours for conferences with the State. Plaintiffs' claims for the hours spent in
16 conferences with the State are reasonable. GEO's assertion that Plaintiffs' counsel "block
17 billed" (Dkt. 551) is unwarranted. The Plaintiffs' counsel adequately explained how they spent
18 their time. GEO argues that the Plaintiffs' lawyers are not entitled to recover attorneys' fees and
19 costs for the two focus groups the Plaintiffs used, arguing that they were excessive. Dkt. 551.
20 The Plaintiffs seek attorneys' fees and costs for only one of the groups. Plaintiffs' claim for
21 attorneys' fees for the focus group is reasonable (costs will be addressed below). *See e.g. United*
22 *Steelworkers of Am. V. Phelps Dodge Corp.*, 896 F.2d. 403, 407(9th Cir. 1990)(allowing hours to
23 be claimed for time spent on moot court and jury consultation). GEO contends that Plaintiffs are
24

1 not entitled to any fees or costs expended on the mistrial. Dkt. 551 (*citing Goldstine v. FedEx*
2 *Freight Inc.*, Western Dist. Wash. case number 18-1164 MJP, 2021 WL 952325 (W.D. Wash.
3 March 12, 2021)). In *Goldstine*, the court *sua sponte* declared a mistrial noting that both sides
4 were responsible for the unreadiness of the case for trial. That is not the case here. Neither side
5 caused the mistrial. It was necessary for all counsel to continue, seamlessly, with the litigation.
6 The preparation for, and conducting, the first trial cannot reasonably be separated out from the
7 whole litigation effort that finally led to the resulting jury verdict. Plaintiffs should be awarded
8 the time their lawyers spent on the first trial. Overall, the hours claimed are not “excessive,
9 redundant, or otherwise unnecessary.” *Gonzalez*, at 1203.

10 Based on a review of the time records submitted, the lodestar amount of \$1,289,701.30 is a
11 reasonable lodestar amount for attorneys’ fees in this case. The Plaintiffs argue that a 1.5
12 multiplier should be applied to their claim for attorneys’ fees.

13 C. MULTIPLIER

14 After making the lodestar computation, the court must assess whether it is necessary to adjust
15 the presumptively reasonable lodestar figure on the factors announced in *Kerr. Ballen v. City of*
16 *Redmond*, 466 F.3d 736, 746 (9th Cir. 2006). “Only in rare circumstances should a court adjust
17 the lodestar figure, as this figure is the presumptively accurate measure of reasonable fees.” *Id.*
18 Likewise, in Washington, an adjustment to the lodestar amount is “considered under two broad
19 categories: the contingent nature of success and the quality of the work performed.” *Bowers v.*
20 *Transamerica Title Ins. Co.*, 100 Wash.2d 581, 598 (1983). These categories are considered in
21 the *Kerr* factors and the *Kerr* analysis applies to the *Bowers* considerations. Each of the *Kerr*
22 factors (along with *Bowers* considerations) will be addressed below.

1 1. The Time and Labor Required. The Court has commented on the time and labor
2 required in determining reasonable hours. The time required was extraordinary. No further
3 analysis is warranted.

4 2. Novelty and Difficulty of Questions. Many of the issues in this case were
5 somewhat novel, complex and difficult; some involved a straightforward application of the
6 MWA. Plaintiffs prevailed on most of the critical issues, and the ultimate issue decision marked
7 the first time such an issue was decided in a plaintiff's favor. This factor favors an addition to
8 the lodestar amount.

9 3. Requisite Skill, Quality of Work (*Bowers Consideration*), and Preclusion of Other
10 Employment. This case required skill to perform the legal services properly. The quality of
11 representation was good. The requisite skill and quality of representation are reflected in the
12 hourly rates charged, which, although reasonable in the community, are on the high end. The
13 case precluded other employment by these attorneys more than other cases would, due to the
14 length of the litigation. These factors favor an addition to the lodestar amount.

15 4. Customary Fee, Whether the Fee is Fixed or Contingent (both a *Kerr* and *Bowers*
16 consideration), and Time Limits. The customary fee in wage cases is basically the lodestar
17 amount. Enhancements are not customary. This was a contingent fee case, and was a substantial
18 risk to counsel. There is no evidence that any unusual time limits were placed on counsel, either
19 by the client or by the circumstances except regarding the mistrial and retrial. These factors favor
20 an addition to the lodestar amount.

21 5. Amount Involved and Results Obtained. The substantial amount involved and the
22 excellent results obtained warrant an adjustment in the lodestar amount. The verdict was a total
23 victory for Plaintiffs after long (from 2017) and torturous litigation.

6. Experience, Reputation and Ability of Attorneys, Undesirability of Case and Relationship with Clients. The consideration of the experience, reputation, and ability of these attorneys is addressed above in the lodestar and no further consideration is required. The undesirability and risks of the case provides a basis to increase fees here. The nature and length of the professional relationship with the clients do not favor an enhancement or reduction of the lodestar.

7. Awards in Similar Cases. Other cases support an enhancement from the lodestar calculation. *Bowers*, at 598; *Hill v. Garda CL NW., Inc.*, 394 p.3d 390, 412 (Wash. Ct. App. 2017); *Kingston v. Int'l Bus. Machines Corp.*, C19-1488 MJP, 2021 WL 2662219, at *5 (W.D. Wash. June 29, 2021).

8. Conclusion on the Multiplier. The Plaintiffs' motion for a 1.5 multiplier to be applied to their motion for attorneys' fees should be granted, in part. The Plaintiffs should be awarded a multiplier of 10% over the lodestar amount; that is, an additional \$128,970.13.

D. PLAINTIFFS' MOTION FOR NON-TAXABLE COSTS

As stated above, the MWA permits recovery of non-taxable costs (expenses of litigation) "as may be allowed by the court." RCW 49.46.090(1). Plaintiffs have also filed a motion with the Clerk of the Court for taxable costs. Dkt. 535. In the instant motion, the Plaintiffs claim non-taxable costs in the amount of \$183,916.67. Dkts. 537 and 555. (In their reply, the Plaintiffs claim costs in the amount of \$3,433.15 for expenses that were left out of their original request inadvertently. Dkt. 555).

The MWA is a remedial statute and so it is construed "liberally to achieve the legislature's broad public policy objectives." *McConnell v. Mothers Work, Inc.*, 131 Wn. App. 525, 532 (2006). Accordingly, the MWA allows for "costs for expert witnesses; depositions and

1 transcripts not used at trial; travel expenses; mediation fees; ordinary office expenses such as
2 postage, phone, fax, copying, and so forth; and parking.” *Id.*

3 The Plaintiffs’ motion for an award of non-taxable cost should be granted, in part.
4 Contrary to GEO’s assertions, the Plaintiffs’ claimed costs are sufficiently documented. GEO
5 argues that the Plaintiffs should not be awarded non-taxable costs for the focus group. Dkt. 551.
6 As stated above, the use of a single focus group is not excessive. The Plaintiffs are entitled to
7 attorneys’ costs associated with that focus group. GEO argues that Plaintiffs should not be
8 awarded costs associated with video editing or synching. Dkt. 551. The Plaintiffs have
9 sufficiently established these expenses as necessary to their success at trial. GEO asserts that the
10 Plaintiffs should not be awarded costs associated with the mistrial and that Plaintiffs’ claim for
11 \$6,067.23 for Zoom costs for the first trial should also be denied. *Id.* The Plaintiffs are entitled
12 to recover most of the costs associated with the first trial. The first unsuccessful trial was a
13 necessary part of the litigation required here. However, they are not entitled to the Zoom costs
14 that they claim. A review of the cost bill indicates that these expenses are for a laptop, stands,
15 microphone, webcam, lights, cables, etc. These are expenses that are presumed being used
16 extensively for other cases and are not unique to this case. The Plaintiffs’ claimed costs of
17 \$183,916.67 should be reduced by \$6,067.23. Accordingly, the Plaintiffs should be awarded
18 \$177,849.44 in non-taxable costs, which includes Plaintiffs’ expenses. Taxable costs will be
19 determined by the Clerk of the Court.

20 **ORDER**

21 It is **ORDERED** that:

22 (1) The Plaintiffs’ Motion for Attorneys’ Fees (Dkt. 537) **IS GRANTED, IN PART,**
23 **AND DENIED, IN PART:**

○ The Plaintiffs are awarded **\$1,418, 671.43** in attorneys' fees; and

(2) The Plaintiff's Motion for Costs (Dkt. 573) **IS GRANTED, IN PART, AND**


DENIED, IN PART:

○ The Plaintiffs are awarded **\$177,849.44** in non-taxable costs.

The Clerk is directed to enter a supplemental judgment for these amounts.

The Clerk is further directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 14th day of December, 2021.



ROBERT J. BRYAN
United States District Judge